STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

NeuroRestorative Michigan
Petitioner **File No. 21-1862**

v

Frankenmuth Mutual Insurance Company
Respondent

Issued and entered
this 18th day of February 2022
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On December 15, 2021, NeuroRestorative Michigan (Petitioner) filed with the Department of Insurance and Financial Services (Department) a request for an appeal pursuant to Section 3157a of the Insurance Code of 1956 (Code), 1956 PA 218, MCL 500.3157a. The request for an appeal concerns the determination of Frankenmuth Mutual Insurance Company (Respondent) that the Petitioner overutilized or otherwise rendered or ordered inappropriate treatment, products, services, or accommodations under Chapter 31 of the Code, MCL 500.3101 to MCL 500.3179.

The Respondent issued the Petitioner a written notice of the Respondent's determination under R 500.64(1) on November 24, 2021. The Petitioner now seeks reimbursement in the full amount it billed for the dates of service at issue.

The Department accepted the request for an appeal on December 15, 2021. Pursuant to R 500.65, the Department notified the Respondent and the injured person of the Petitioner's request for an appeal on January 6, 2022, and provided the Respondent with a copy of the Petitioner's submitted documents. Respondent filed a reply to the Petitioner's appeal on January 24, 2022.

The Department assigned an independent review organization (IRO) to analyze issues requiring medical knowledge or expertise relevant to this appeal. The IRO submitted its report and recommendation to the Department on January 31, 2022.

II. FACTUAL BACKGROUND

This appeal concerns the denial of payment for physical therapy rehabilitation treatment rendered on 13 dates of service[1] under Current Procedural Terminology (CPT) codes 97110, 97140, 97530, 97750, which are described as: therapeutic procedure, 1 or more areas, each 15 minutes, therapeutic exercises performed in either an active, active-assisted or passive (e.g., treadmill, isokinetic exercise, lumbar stabilization, stretching, strengthening) approach; manual therapy techniques, 1 or more regions, each 15 minutes (e.g., mobilization / manipulation, manual lymphatic drainage, manual traction); therapeutic activities, direct (one on one) patient contact by the provider (use of dynamic activities to improve functional performance), each 15 minutes; and physical performance test or measurement (e.g., musculoskeletal functional capacity) with written report, each 15 minutes; respectively.

With its appeal request, the Petitioner identified the following diagnoses for the injured person in relation to a motor vehicle accident in December of 2012: traumatic brain injury with resultant surgical history of cervical fusion from occiput to C6 and fracture of left radius and left fibula. Petitioner further noted a "strong correlation" between the injured person's injuries and the subsequent development of chronic pain syndrome, thoracic spine pain, low back pain, and trochanteric bursitis and piriformis syndrome.

The Petitioner's request for an appeal further stated:

> Physical therapy has assisted [the injured person] with the progression toward achieving [the injured person's] maximum functional capacity and mobility while performing ADLs, taking into account [the injured person's] functional capacity and appropriate norms for individuals of the same age and gender. Without continued physical therapy services to address the stated diagnoses [the injured person] would suffer a significant decline in function.

In its determination, Respondent cited the American College of Occupational and Environmental Medicine (ACOEM) recommendations related to shoulder pain, hip pain, and traumatic brain injury, as well as the Official Disability Guidelines (ODG). Respondent noted that the injured person has had over 30 physical therapy visits since January 2021 and that the clinical presentation is inconsistent with the evidence-based guidelines for continued physical therapy sessions. In its reply, Respondent reaffirmed the applicability of the ACOEM recommendations and ODG to its determination that the at-issue services were not medically necessary.

III. ANALYSIS

Director's Review

Under MCL 500.3157a(5), a provider may appeal an insurer's determination that the provider overutilized or otherwise rendered inappropriate treatment, products, services, or accommodations, or that

[1] The at-issue dates of service in this appeal are June 1, 4, 7, 9, 11, 14, 16, 18, 22, 23, 25, 28, and 30, 2021.

the cost of the treatment, products, services, or accommodations was inappropriate under Chapter 31 of the Code. This appeal involves a dispute regarding inappropriate treatment and utilization.

The Director assigned an IRO to review the case file. In its report, the IRO reviewer concluded that, based on the submitted documentation, "there was an overutilization of care on the [at-issue dates of service]" based on medically accepted standards.

The IRO reviewer is a licensed and practicing physical therapist who is knowledgeable with respect to the medical conditions and type of treatment at issue in this appeal. In its report, the IRO reviewer referenced R 500.61(i), which defines "medically accepted standards" as the most appropriate practice guidelines for the treatment provided. These may include generally accepted practice guidelines, evidence-based practice guidelines, or any other practice guidelines developed by the federal government or national or professional medical societies, boards, and associations. The IRO reviewer relied on guidelines from the American Physical Therapy Association (APTA) and the Academy of Neurologic Physical Therapy (ANPT), as well as evidence-based literature, in reaching its determination.

The IRO reviewer opined:

> According to the records, there were no objective measures incorporated into [the injured person's] treatment plan to demonstrate objective and measurable progress with her therapy as per ANPT guidelines.
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> [The injured person] did not demonstrate an improvement with therapeutic exercises or treatments and therapy was not adjusted or discontinued due to [the] maladaptive response to therapy or achieving [the injured person's] baseline…. [The injured person's] care was overutilized for [the injured person's] clinical presentation as per APTA and ANPT guidelines.

The IRO reviewer recommended that the Director uphold the Respondent's determination that the treatment provided to the injured person on the dates of service at issue was not medically necessary in accordance with medically accepted standards, as defined by R 500.61(i).

IV. ORDER

The Director upholds the Respondent's determination dated November 24, 2021.

This order applies only to the treatment and dates of service discussed herein and may not be relied upon by either party to determine the injured person's eligibility for future treatment or as a basis for action on other treatment or dates of service not addressed in this order.

This is a final decision of an administrative agency. A person aggrieved by this order may seek judicial review in a manner provided under Chapter 6 of the Administrative Procedures Act of 1969, 1969

PA 306, MCL 24.301 to 24.306. MCL 500.244(1); R 500.65(7). A copy of a petition for judicial review should be sent to the Department of Insurance and Financial Services, Office of Research, Rules, and Appeals, Post Office Box 30220, Lansing, MI 48909-7720.

Anita G. Fox
Director
For the Director:

X Sarah Wohlford

Sarah Wohlford
Special Deputy Director
Signed by: Sarah Wohlford